

1 rulemaking, is a complicated process in and of
2 itself.

3 ELIZABETH CABRASER: It's very
4 complicated. This took a lot of negotiation with
5 the Federal Appellate Rules Committee because
6 nobody wants to overburden the Courts of Appeal
7 as a matter of policy.

8 HON. ELIZABETH LAPORTE: It's okay to
9 burden the trial courts apparently.

10 ELIZABETH CABRASER: Well, yes. With
11 apologies, yes. And so rather than have an
12 elaborate procedure at the appellate level, with
13 panels that may not know anything about the
14 underlying case or settlement, would have to read
15 the whole record. This is a way to make sure
16 that even if, you know, the hostage move doesn't
17 take place until a notice of appeal, it can still
18 be dealt with by the district court without
19 having to go through a remand process or any of
20 the other elaborate workarounds.

21 And then the second area of major
22 change, and there is a very lengthy committee
23 note on this, is that what is called front-
24 loading in the settlement approval process. So
25 rather than wait until the notice has gone out

1 and the final approval hearing, to come in with
2 information, with experts, with all the details
3 on the settlement, that now takes place at the
4 front end, before the notice goes out. And that
5 is a major, major shift.

6 Judges did not like a situation where
7 they had preliminarily approved a settlement
8 because the settling parties said it was great,
9 they sent out the notice, they get in objections
10 and questions, they look at the settlement and
11 then they have all these unresolved questions and
12 they're supposed to make a final decision. And
13 they don't like the pressure of having to do that
14 after a lot of time and money and effort has gone
15 in to the notice process and they're at the end.
16 They don't want to send people back to square
17 one.

18 So the solution, and this was proposed
19 by judges, was let's just do as much of this as
20 we can. We can't do everything, it's
21 preliminary, but let's do as much of it as we can
22 at the front end so that before we send out that
23 notice, right, we have information. And by the
24 way, since the judge has information and it's on
25 the record, it can then be put on the settlement

1 website so that class members who are getting the
2 notice can have that information and they don't
3 have to guess about what's gone on and what's
4 going on.

5 And as I say, that is all supposed to
6 take effect next year. But surprise, surprise,
7 it's happening now, partly because it is a
8 codification of some judges and some courts' best
9 practices and partly because judges were waiting
10 for this and now they have it and they're using
11 it.

12 HON. ELIZABETH LAPORTE: Yeah.

13 QUYEN TRUONG: So these rule changes
14 are really going to be important to kind of clear
15 the underbrush and definitely in the settlement
16 context, but overall with the class action
17 process. And we're going to get to further
18 discussion of settlement agreements, as well as
19 such an important component of the whole process.

20 But let's start first with sort of the
21 entire update from Noah on the juris prudence
22 here that's evolving and starting more at, maybe
23 at the front end on the certification and
24 standing and other issues as well.

25 NOAH LEVINE: Sure. Sure. So time